

1))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1646 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KAMAL KISHOR RAMDAS VYAS

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR KT DAVE, AGP for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2000

ORAL JUDGEMENT

#. The petitioner - Kamal Kishor Ramdas Vyas, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Vadodara City, Vadodara, in exercise of powers under Section 3(2) of the PASA Act, dated August 1, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 3 offences registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of the incidents that occurred on 11.7.99, 26.6.99 and 20.7.99 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted her arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of three anonymous witnesses were recorded on 27th July, 1999, 28th July, 1999 and 29th July, 1999 which were verified by the detaining authority on 30th July, 1999 and the order of detention is passed on 1st August, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Ms. Kachchhwah further submitted that the detaining authority has not considered the statements recorded under section 161 of the Code of Criminal Procedure by the Investigating Agency. This would vitiate the detention. This would also infringe the right of the detenu of making an effective representation (Jiva Veiyapuri Madras v. Commissioner of Police, 1991 [1] GLH 346).

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority

has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. So far as the registered cases are concerned, it is to be noted that the statements of witnesses have not been supplied to the detainee along with grounds of detention. But they were subsequently supplied even before making of the demand of representation. It transpires that the statements ought to have been supplied were already in existence when the order of detention was passed. It also transpires that these statements were not considered by the detaining authority. Non-consideration of the statements recorded under section 161 of the Code of Criminal Procedure would vitiate the order of detention as has been held in the case of (Jiva Veiyapuri Madrasi v. Commissioner of Police, 1991 [1] GLH 346).

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated August 1, 1999 is hereby quashed and set aside. The detainee - Kamal Kishor Ramdas Vyas is ordered

to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

pirzada/-